

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK J. KWOKA et al.,

Plaintiffs,

-against-

DIANE D'ANGELO,

Defendant.

24-cv-2246 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

Plaintiffs' motion for expenses and attorneys' fees, ECF No. 30, is hereby DENIED. Plaintiffs argue that they are entitled to expenses and fees under Federal Rule of Civil Procedure 4(d)(2), which provides that courts must impose on a defendant who refuses to waive service without good cause "(A) the expenses later incurred in making service; and (B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses." Fed. R. Civ. P. 4(d)(2). To recover under this rule, however, Plaintiffs must have followed Federal Rule of Civil Procedure 4(d)(1) in requesting that Defendant waive service. *See Kumaran v. Vision Fin. Mkts., LLC*, 338 F.R.D. 17, 18 (S.D.N.Y. 2021) ("The procedural requirements of Rule 4(d)(1) are a 'condition precedent to a demand for costs for refusal to waive service.'" (citation omitted)). Among other requirements, Rule 4(d)(1) requires that a waiver request include "2 copies of the waiver form" and "a prepaid means for returning the form." Fed. R. Civ. P. 4(d)(1)(C). Plaintiffs concede that they sent their request via email, and nothing in the email or its attachments appears to provide a prepaid means of returning the form. *See* ECF No. 31-1 at 1. Further, the request was made to Defendant's attorney, rather than to the Defendant herself. *See* Fed. R. Civ. P. 4(d)(1)(A)(i). Because Plaintiffs did not comply with Rule 4(d)(1)'s procedural requirements, they cannot recover expenses and fees under Rule 4(d)(2). *See Calenture, LLC v. Shiff*, No. 23-CV-

11238, 2024 WL 1157846, at *2 (S.D.N.Y. Mar. 18, 2024) (denying recovery under Rule 4(d)(2) because waiver request sent by email was procedurally deficient).

The Clerk of Court is directed to terminate the motion at ECF No. 30.

SO ORDERED.

Dated: September 9, 2024
New York, New York

A handwritten signature in black ink, appearing to read 'Arun Subramanian', is written over a horizontal line.

ARUN SUBRAMANIAN
United States District Judge